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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Hanh Kim Le

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06/28/2004

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EXAMINER

HAQ, NAEEM U

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,535

Applicant(s)

LE ET AL.

Examiner

Naeem Haq

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ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,6,8-10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,8-10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Response to Amendment***

This action is in response to the Applicants' amendment A, paper number 7, filed on April 6, 2004. Claims 3, 4, 7, 11, and 12 have been canceled. New claims 13-16 have been entered. Claims 1, 2, 5, 6, 8-10, and 13-16 are pending and will be considered for examination. Applicants' amendments to claims 1 and 2 are sufficient to overcome the Examiner's rejection of these claims under 35 U.S.C 101. This rejection is hereby withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 5, 6, 8-10, and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1, 5, 9, and 13 are full of contradictions which renders the subject matter difficult to analyze. For example, the independent claims recite the limitation "receiving a bid for said item from a first bidder which is **currently a high bid** for said item" (emphasis added). The claims also recite, "identifying a **previously recorded proxy bid** from a second bidder **which is greater than said current high bid** but not greater than said current high bid plus said minimum increment" (emphasis added). It is unclear to the Examiner how the

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first bidder's bid can be deemed as the current high bid when the second bidder has previously placed a higher bid. As an example, assume that the first bidder places a bid of \$5.00 and that the second bidder places a proxy bid of \$5.50. This scenario would meet the limitations identified above, however, it is unclear how or why the first bidder's bid of \$5.00 would be regarded as the current high bid when clearly the second bidder has a higher bid. Furthermore, the claims also recite "specifying a minimum increment for bidding on an item" It is unclear to the Examiner how the second bidder can place a proxy bid "... which is greater than said current high bid but not greater than said current high bid plus said minimum increment" This would mean that the second bidder's proxy bid is either less than or equal to the current high bid plus said minimum increment. If the first case is true then it means that the second bidder's proxy bid violates the "...minimum increment for bidding..." limitation. As an example, assume that the minimum increment is \$2.00 and that the first bidder's bid is \$10.00. According to the claim language, the invention will now try to identify a second bidder who has placed a proxy bid which is greater than \$10.00 but less than \$12.00 ("...greater than said current high bid but not greater than said current high bid plus said minimum increment"). This would mean that the second bidder's proxy bid violates the minimum increment for bidding since it is less than \$12.00. The Examiner is confused as to why a minimum increment is specified if it is not enforced? On the other hand, if the second bidder's proxy bid is equal to the current high bid plus said minimum increment (i.e. \$12.00) then it means that the proxy bid is not an off-increment bid but rather an on-increment bid. Finally, claims 1, 5, 9, and 13 are confusing because they repeatedly

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use the same terms and it is unclear to the Examiner if these terms are referring to same bid. For example, claim 1 recites the terms "high bid" and "current high bid" in lines 4 and 9 and lines 7 and 10 respectively. For these reasons, claims 1, 5, 9, and 13 are rendered indefinite.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 5, 6, 8-10, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (US 6,243,691 B1).

Referring to claims 1, 5, and 9, Fisher teaches a method and system for generating proxy bids in an electronic auction comprising:

- specifying a minimum increment for bidding on an item (Figure 2);
- receiving a bid for said item from a first bidder which is currently a high bid for said item (Figure 2);
- identifying a previously recorded proxy bid from a bidder (column 8, line 56 – column 9, line 6).

Fisher does not teach that the proxy bid from a second bidder is greater than the current high bid but not greater than said current high bid plus said minimum increment.

However, Fisher teaches that a plurality of bidders are allowed to establish the limit amount of their proxy bids when the bids are initially placed (column 8, lines 56-60).

Therefore it would have been obvious to one of ordinary skill in the art, at the time the

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invention was made, to allow a bidder to set the limit of the proxy bid to whatever amount the bidder desired. One of ordinary skill in the art would have been motivated to do so in order to allow the bidder to place a bid that he or she felt was competitive. Fisher does not teach generating an off-increment bid which becomes a high bid for said item utilizing said proxy bid, wherein said second bidder holds a current high bid for said item, further wherein said off-increment bid does not increase said bid received from said first bidder by said increment, and wherein said off-increment bid does not exceed said proxy bid. However, Fisher teaches that during proxy bidding a bid may be incremented based on the percentage of the bid (column 12, lines 33-45). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to adjust a bid upward by using a percentage of the bid as opposed to a minimum increment. One of ordinary skill in the art would have been motivated to do so in order to guarantee a proxy bidder the lowest possible price, as taught by Fisher (column 12, lines 58-61).

Referring to claims 6 and 7, these claims recite comparing a proposed bid to a proxy bid wherein the proposed bid is equal to a minimum increment plus a current high bid. These claims go on to recite that if proposed bid exceeds the proxy bid then awarding an item to a second bidder for the proxy bid, and if the proposed bid does not exceed the proxy bid then awarding the item to the second bidder for the proposed bid. However, these limitations are inherent in Fisher. Fisher teaches a system and method for conducting proxy bidding for a plurality of bidders. Proxy bidding is inherently designed to allow a bidder to obtain an item for the best possible price up to the proxy

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bid limit. Therefore, if an auction bid reaches a proxy limit and that bidder has the highest bid then the bidder wins the auction for the proxy bid. However, if the bidder's bid is below the proxy bid and that bidder has the highest bid then the bidder wins the auction for the proposed bid.

Response to Arguments

Applicants' arguments with respect to the Examiner's rejection of claims 2-4 and 10-12 under 35 U.S.C 112, second paragraph have been fully considered and are persuasive. The rejection is hereby withdrawn.

Applicant's arguments with respect to claims 1 and 5-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (703)-305-3930. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (703)-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

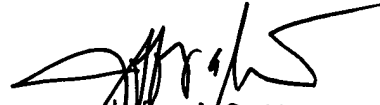
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naeem Haq, Patent Examiner
Art Unit 3625

June 24, 2004



Jeffrey A. Smith
Primary Examiner